

NOT FOR PUBLICATION

JUL 31 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

MIGUEL GUZMAN MONTOYA;
MARIA ROZA HERLINDA LUNA
LOPEZ,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-76583

Agency Nos. A75-488-227
A75-488-228

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Miguel Guzman Montoya and Maria Roza Herlinda Luna Lopez, husband
and wife, natives and citizens of Mexico, petition for review of the Board of

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Immigration Appeals’ (“BIA”) order denying their motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying Petitioners’ motion to reopen because it considered the new evidence presented regarding their daughter’s educational and medical difficulties, and acted within its broad discretion in determining that it was not material because it did not indicate that her condition was severe or that she would be unable to obtain assistance or treatment in Mexico. *See* 8 C.F.R. § 1003.2(c)(1) (providing that a motion to reopen “shall not be granted unless it appears to the [BIA] that evidence sought to be offered is material”).

Petitioners have waived any contention that the BIA violated due process by failing to discuss the issue in the body of their opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir.1996) (holding issues referred to in the statement of the case but not discussed in the body of the opening brief are deemed waived).

PETITION FOR REVIEW DENIED.